

## REMARKS/ARGUMENTS

In the Office Action mailed September 9, 2009, claims 1-6 were rejected. In response, Applicant hereby requests reconsideration of the application in view of the below-provided remarks. No claims are amended, added, or canceled.

### Claim Rejections under 35 U.S.C. 102 and 103

Claims 1-4 and 6 were rejected under 35 U.S.C. 102(e) as being anticipated by Richmond et al. (U.S. Pat. No. 7,296,170, hereinafter Richmond). Additionally, claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Richmond in view of Pohlmeier et al. (U.S. Pat. No. 6,959,014, hereinafter Pohlmeier). However, Applicant respectfully submits that these claims are patentable over Richmond and Pohlmeier for the reasons provided below.

### Swearing back of Richmond

The attached declaration, which is signed by the sole inventor of the present application, provides evidence to establish invention of the subject matter of the claims of the present application prior to the effective date of Richmond. Therefore, the rejections under 35 U.S.C. 102 and 103 based on Richmond should be withdrawn.

In particular, Exhibit A of the attached declaration shows an Invention Description which explains aspects of the conception of the subject matter described and claimed in the present application at least as of February 12, 2003. Also, Exhibits B and C of the attached declaration show an ID abstract (dated December 18, 2003) and a Search Report (date December 22, 2003), respectively, related to the ongoing preparation and review of the present application.

Exhibits A, B, and C are all dated prior to the filing date of Richmond (January 23, 2004). Additionally, Exhibits B and C are each dated within about two months of the actual filing date of the foreign application to which the present application claims the benefit of priority. Within a typical corporate environment, communications which occur within about two months of the actual filing date of a patent application should be considered sufficient evidence of due diligence in pursuing constructive reduction to

practice based on the actual filing of the present application. Thus, Applicant submits that the documentations of Exhibits B and C is evidence of due diligence between at least the date of the ID Abstract and the Search Report through the foreign (EP) application priority date of the present application. More specifically, Applicant submits that the documentation of Exhibits B and C is evidence of due diligence at least between the date of the ID Abstract (December 18, 2003) and the Search Report (December 22, 2003) through the actual filing date (February 27, 2004) of the related EP Application 04100789.9.

Therefore, the claims of the present application are patentable over Richmond, either alone or in combination with other cited references, because the attached declaration establishes invention of the subject matter of the claims of the present application and diligence in reduction to practice prior to the effective date of Richmond. Accordingly, Applicant respectfully requests that the rejections of the claims based on Richmond, either alone or in combination with other references, be withdrawn.

## CONCLUSION

Applicant respectfully requests reconsideration of the claims in view of the remarks made herein. A notice of allowance is earnestly solicited.

Petition is hereby made under 37 CFR 1.136(a) to extend the time for response to the Office Action of 12/09/2009 to and through 01/09/2010, comprising an extension of the shortened statutory period of one month.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

/mark a. wilson/

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